

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND WRIGHT,

Plaintiff,

v.

W.L. MUNIZ,

Defendant.

Case No. 15-cv-01600-HSG (PR)

**ORDER DENYING MOTION TO
VACATE JUDGMENT**

Re: Dkt. No. 19

On March 26, 2015, petitioner, a former state prisoner, filed a *pro se* habeas petition challenging the California Department of Corrections and Rehabilitation's calculation of his release date. The petition was originally filed in the United States District Court for the Eastern District of California, using that court's form for habeas petitions brought pursuant to 28 U.S.C. § 2254. The Eastern District thereafter transferred the petition to this District on the ground that, because petitioner was challenging the execution of his sentence and was incarcerated in this District, venue over the petition lies in this District.

On August 10, 2015, the case was dismissed for failure to exhaust state court remedies. Petitioner was advised that if chose to re-file after exhausting state court remedies, he could not re-file his petition as an amended petition in this action but must instead file a new petition and a new case number would be assigned it.

On December 1, 2015, petitioner re-filed the same petition in this Court, using the same Eastern District form and with the case number crossed out. With the petition, he filed a letter reporting that state court remedies had been exhausted on November 10, 2015 when the California Supreme Court denied his state habeas petition. The re-filed federal petition and letter were opened as a new action and given a new case number, C 15-5506 HSG (PR). The Clerk notified

petitioner that he had not filed a petition using this Court's form for Section 2254 petitions. Petitioner was also advised that he needed to pay the \$5.00 filing fee or file an application to proceed in forma pauperis ("IFP"). The Clerk also mailed to petitioner the Court's petition and IFP forms and instructions for completing the forms.

Petitioner then filed a motion to vacate judgment in this action. It appears that he is under the impression that his re-filed petition was rejected. This is incorrect. Accordingly, the instant motion is DENIED. There is no need to vacate judgment in this action. Petitioner may proceed with his petition in C 15-5506 HSG (PR) after re-submitting the petition on the form he was provided. The petition should include civil case number C 15-5506 HSG (PR).

Finally, the Court notes that although petitioner is no longer in custody, the Clerk sent him a prisoner IFP application. Should petitioner be granted leave to proceed IFP based on the information provided in the prisoner IFP application, the Court will be unable to collect the funds from petitioner's prisoner trust account as required under 28 U.S.C. § 1915(b). Therefore, the Clerk is directed to provide petitioner with a non-prisoner IFP application.

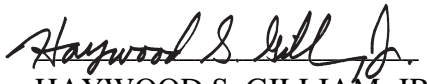
The Court notes that petitioner's form petition and IFP application in C 15-5506 HSG (PR) are currently due on or before January 8, 2016. In the interests of justice, the Court *sua sponte* extends petitioner's deadline to January 22, 2016.

The Clerk shall file a copy of this order in C 15-5506 HSG (PR).

This order terminates Docket No. 19.

IT IS SO ORDERED.

Dated: 12/16/2015


HAYWOOD S. GILLIAM, JR.
United States District Judge